

STATE OF MICHIGAN
COURT OF APPEALS

OLD KENT BANK, KENNETH DARGA, and
SANDY DARGA,

UNPUBLISHED
September 26, 2000

Plaintiffs-Appellees,

v

No. 219474
Eaton Circuit Court
LC No. 98-000910-CK

KITCHEN & BATH GALLERY, INC., EDGAR J.
DIETRICH, ALYSTER'S KITCHEN & BATH
GALLERY, INC., and KATHERINE
RICHARDSON,

Defendants-Appellants.

Before: Griffin, P.J., and Wilder and Owens, JJ.

PER CURIAM.

Defendants appeal as of right from an order of default judgment in favor of plaintiffs pursuant to MCR 2.313(B)(2)(c). We affirm.

This case primarily involves plaintiffs' claim that defendants repeatedly refused to attend scheduled depositions. Defendants Edgar Dietrich and Katherine Richardson contend they did not wilfully refuse to attend scheduled depositions as ordered by the court and that the sanction of entering a default judgment for their noncompliance was too severe. We disagree. This Court reviews a trial court's decision to enter an order of default judgment for an abuse of discretion. *Frankenmuth Mutual Ins Co v ACO, Inc*, 193 Mich App 389, 397; 484 NW2d 718 (1992).

MCR 2.313(D)(1)(a) provides that if a party fails to appear before the person who is to take his or her deposition, after being served with proper notice, then the trial court may order such sanctions as are "just," including sanctions authorized by MCR 2.313(B)(2)(c). MCR 2.313(B)(2)(c) explicitly authorizes a trial court to enter an order of default judgment against a party who fails to obey an order to provide discovery. *Bass v Combs*, 238 Mich App 16, 26; 604 NW2d 727 (1999). The trial court should carefully consider the circumstances of the case to determine whether a drastic sanction such as default judgment is appropriate. *Id.* This type of sanction is generally appropriate only when a party

flagrantly and wantonly refuses to facilitate discovery, not when the failure to comply with a discovery request is accidental or involuntary. *Id.* The factors that a trial court should consider when determining the appropriate sanction are:

(1) whether the violation was wilful or accidental; (2) the party's history of refusing to comply with discovery requests (or refusal to disclose witnesses); (3) the prejudice to the [other party]; (4) actual notice to the [other party] of the witness and the length of time prior to trial that the [other party] received such actual notice; (5) whether there exists a history of [the party's] engaging deliberate delay; (6) the degree of compliance by the [party] with other provisions of the court's order; (7) an attempt by the [party] to timely cure the defect, and (8) whether a lesser sanction would better serve the interests of justice. [*Id.* at 26-27, quoting *Dean v Tucker*, 182 Mich App 27, 32-33; 451 NW2d 571 (1990).]

In this case, after analyzing the behavior of defendants and applying the relevant factors, we conclude the trial court did not abuse its discretion in granting plaintiffs' motion for entry of default judgment. Defendants repeatedly thwarted discovery in this case. They canceled scheduled depositions on four separate occasions without providing a genuine reason for their needed absence. They failed to comply with the court's order compelling their depositions, and they failed to pay plaintiffs' attorney fees as ordered by the court. Defendants' conduct meant that, with only two weeks before the case was scheduled to go to mediation, discovery had not begun. Defendants argue Dietrich did not willfully refuse to attend the scheduled depositions. According to defendants, Dietrich had a very busy law practice and thus could not attend the scheduled depositions due to scheduling conflicts, and Richardson "had an issue relative to her required appearance by a deposition." We find these excuses disingenuous. Because of defendants' flagrant disregard of the discovery process, default judgment was appropriate in this case.

Defendants also argue the trial court should have granted their motion for summary disposition pursuant to MCR 2.116(C)(4). Specifically, defendants argue the trial court did not have subject-matter jurisdiction over plaintiffs' claims. We disagree. De novo review is appropriate for this issue for two reasons. First, this Court reviews a trial court's decision to grant or deny summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Second, subject-matter jurisdiction is a question of law that this Court reviews de novo. *WA Foote Memorial Hosp v Dep't of Public Health*, 210 Mich App 516, 522; 534 NW2d 206 (1995).

Circuit courts are courts of general jurisdiction and have original jurisdiction over all civil claims and remedies "except where exclusive jurisdiction is given by the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state." *Farmers Ins Exchange v South Lyon Community Schools*, 237 Mich App 235, 241; 602 NW2d 588 (1999), quoting MCL 600.605; MSA 27A.605. A circuit court has equity jurisdiction "where complete protection and relief requires the cancellation of written instruments, the rescission of a transaction, or other specific relief of an equitable character." *ECCO, Limited v Balimoy Mfg Co*, 179 Mich App 748, 750; 446 NW2d 546 (1989). Equity will not take jurisdiction where there is a full,

complete, and adequate remedy at law, unless it is shown that there is some feature of the case peculiarly within its jurisdiction. *Id.* at 751.

We conclude the trial court correctly denied defendants' motion for summary disposition pursuant to MCR 2.116(C)(4) because the court had equitable jurisdiction over plaintiffs' claims. In their complaint, plaintiffs requested that the court pierce the corporate veil, set aside the conveyance of the assets of defendant Kitchen & Bath Gallery to Richardson as a fraudulent conveyance, and declare defendant Alyster's to be the Kitchen & Bath's successor to Kitchen & Bath's obligations. Each of these remedies are forms of equitable relief. See *Foodland Distributors v Al-Naimi*, 220 Mich App 453, 456; 559 NW2d 379 (1996); *Fireman's Fund Ins Co v Harold Turner, Inc.*, 159 Mich App 812, 816; 407 NW2d 82 (1987); *Stevens v McLouth Steel Products Corp.*, 433 Mich 365, 376; 446 NW2d 95 (1989). Because plaintiffs sought equitable relief, the trial court had equitable jurisdiction over plaintiffs' claims.

Defendants next argue the trial court should have granted their motion for summary disposition pursuant to MCR 2.116(C)(6). Again, we disagree. Our Supreme Court has held summary disposition is appropriate under MCR 2.116(C)(6) when there is another action pending between the same parties involving the same claims. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). Here, we conclude the trial court correctly denied defendants' motion for summary disposition pursuant to MCR 2.116(C)(6) because there was no evidence that plaintiffs were attempting to collect on the money judgments in district court or the cases were pending when the trial court decided the motion for summary disposition in this case. *Id.* Furthermore, this was not an action for a breach of contract against Kitchen & Bath only. Accordingly, defendants' argument is without merit.

Defendants next argue that venue in Eaton County was improper and plaintiffs failed to establish the merits of their complaint. Because we have already determined that default judgment was appropriate and the trial court correctly denied defendants' motion for summary disposition pursuant to MCR 2.116(C)(4) and (6), we need not address these issues.

Affirmed.

/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder
/s/ Donald S. Owens